

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :
: **ORDER**
v. :
: 14 CR 768-05 (VB)
MYKAI DAVIS, :
Defendant. :
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The re-sentencing in this case is now rescheduled for June 5, 2020, at 11:00 a.m. (which needed to be changed from 12:00 p.m. due to the latest revised scheduling protocols at the Metropolitan Correctional Center).

Rule 43(a)(3) of the Federal Rules of Criminal Procedure ordinarily requires the defendant's physical presence at sentencing. During the current national public health emergency, however, under Section 15002(b)(2)(A) and (b)(4) of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, the Court is empowered to conduct a sentencing by videoconference (or telephone conference if videoconferencing is not reasonably available) if (i) the defendant consents after consultation with counsel, and (ii) the Court finds "for specific reasons" that the "sentencing . . . cannot be further delayed without serious harm to the interests of justice."

Because the public health emergency precludes in-person court proceedings at this time, the Court expects to conduct the re-sentencing hearing in this case by videoconference (or by telephone conference if videoconferencing is not reasonably available). By Order dated May 8, 2020, the Court instructed defense counsel to consult with his client and, by May 29, 2020, advise the Court in writing whether defendant will waive his right to be physically present for the re-sentencing and consents to appear by video or teleconference. (Doc. #442 at 2). This deadline remains in effect.

Moreover, the re-sentencing in this case has been unavoidably delayed for several months and it is clear that defendant is very eager to proceed with the re-sentencing. (See Doc. #442). For these specific reasons, the Court is prepared to find, in accordance with the CARES Act, that sentencing cannot be further delayed without serious harm to the interests of justice.

Accordingly, it is hereby ORDERED:

1. The Court will arrange for the re-sentencing hearing to proceed by videoconference (or by telephone conference if videoconferencing is not reasonably available). The proceeding will be conducted through CourtCall. In advance of the re-sentencing, Chambers will email all counsel with further information on how to access the conference. Those participating by video will be provided a link to be pasted into their web browser. **The link is non-transferrable and can be used by only one person; further, it should be used only at the time of the conference because using it earlier could result in disruptions to other proceedings.** To optimize the quality of the video feed, only the Court, defendant, defense

counsel, and counsel for the government will appear by video for the proceeding; all others will participate by telephone. Due to the limited capacity of the CourtCall system, only one counsel per party may participate. Co-counsel, members of the press, and the public may access the audio feed of the conference by calling 855-268-7844 and using access code 32091812# and PIN 9921299#.

2. To optimize use of the CourtCall technology, all those participating by video should:

- a. Use the most recent version of Firefox, Chrome, or Safari as the web browser. Do **not** use Internet Explorer.
- b. Use hard-wired internet or WiFi. If using WiFi, the device should be positioned as close to the Wi-Fi router as possible to ensure a strong signal. (Weak signals may cause delays or dropped feeds.)
- c. Minimize the number of others using the same WiFi router during the conference.

3. If CourtCall does not work well enough and the Court decides to transition to its teleconference line, counsel and defendant should call **(888) 363-4749 (toll free) or (215) 446-3662** and use Access Code **1703567**. (Members of the press and public may call the same number, but will not be permitted to speak during the hearing.)

4. As previously ordered, defendant's sentencing submission remains due May 22, 2020, and the government's submission remains due May 29, 2020.

Dated: May 21, 2020
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge